UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF MEETING, Public Session

March 15, 2004

Call to order: Chairman Liane Randolph called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:58 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Randolph, Commissioners Phil Blair, Sheridan Downey, Pam Karlan and Tom Knox were present.

Item #1. Public Comment.

There was no public comment regarding items not on the agenda.

Chairman Randolph noted that one public comment letter was received and provided to the Commissioners and to Enforcement staff.

Consent Calendar

Commissioner Knox asked that he be recused from item #15.

Commissioner Blair moved that the following items on the consent calendar be approved:

Item #2. Approval of the Minutes of the February 10, 2004, Commission Meeting.

Item #3. *In the Matter of Lockheed Martin Corporation*, FPPC No. 03/492. (1 count.)

Item #4. *In the Matter of Larry W. Sonsini*, FPPC No. 03/548. (1 count.)

Item #5. *In the Matter of Stewart Alsop*. FPPC No. 03/565. (1 count.)

Item #6. *In the Matter of Hiromichi Yamagata*, FPPC No. 03/549. (1 count.)

Item #7. *In the Matter of Twin Med, Inc.*, FPPC No. 03/553. (1 count.)

Item #8. *In the Matter of Kennedy Wilson, Inc.*, FPPC No. 03/577. (1 count.)

Item #9. *In the Matter of Julie E. Smith*, FPPC No. 03/685. (1 count.)

Item #10. *In the Matter of Thomas G. McCall*, FPPC No. 03/556. (1 count.)

Item #11. *In the Matter of Geoffrey C. Jones*, FPPC No. 03/637. (1 count.)

Item #12. *In the Matter of Solange MacArthur*, FPPC No. 03/557. (1 count.)

Item #13. *In the Matter of Han-Ying Wang*, FPPC No. 03/546. (1 count.)

Item #14. *In the Matter of Beverly Hills Properties*, FPPC No. 03/561. (2 counts.)

Item #15. *In the Matter of Californians Against Government Run Healthcare, a Committee Against Proposition ___, with Major Funding by Restaurants and Retailers; and Steven Churchwell*, FPPC No. 03/847. (10 counts.)

Item #16. *In the Matter of David Rosenaur and Export International*, FPPC No. 99/344. (8 counts.)

Item #17. *In the Matter of Mike Matsuda and Mike Matsuda for Assembly*, FPPC No. 00/158. (1 count.)

Item #18. Failure to Timely File Late Contribution Reports – Proactive Program.

Item a. *In the Matter of Jerome Moss*, FPPC No. 2003-826. (1 count.)

Item b. *In the Matter of Brian Devine*, FPPC No. 2003-840. (1 count.)

Item c. *In the Matter of Beamhit, LLC*, FPPC No. 2003-842. (1 count.)

Commissioner Karlan seconded the motion.

Commissioners Blair, Downey, Karlan, Knox and Chairman Randolph voted "aye." The motion passed unanimously, with Commissioner Knox abstaining from item #15.

Item #19. *In the Matter of California Independent Business Political Action Committee and Charles H. Bell, Jr.*, FPPC No. 99/195.

Enforcement Chief Steve Russo explained staff's allegations that respondents committed eight violations of the mass mailing sender identification regulations of the PRA, by sending mailings that did not identify the California Independent Business Political Action Committee (CIBPAC) as the sender of the mailings. The respondents contested liability, charging that § 84305 was unconstitutional as applied to non-candidate controlled committees, that prior staff advice had created some ambiguity in what sender identification was required, that the case was barred by laches, and that a treasurer cannot be held liable for a sender identification violation.

Mr. Russo reported that Administrative Law Judge Jaime Rene Roman decided the case under stipulated facts, finding that the violations were true. The ALJ found the legal arguments of counsel to be without merit and disregarded them. The ALJ concluded that the violations were intentional and imposed a maximum penalty of $16,000. Mr. Russo

stated that Enforcement Division supported the ALJ proposed decision and asked the Commission to adopt the decision in its entirety.

Commissioner Karlan questioned whether there was any circumstance under the theory brought in this case, in which a treasurer would not be liable for a committee's actions. She noted that there was no discussion of something that would render the treasurer liable on a theory that has anything to do with the treasurer's actions other than being the treasurer of the committee that committed the violations.

Mr. Russo responded that there was liability by virtue of being the treasurer, because the treasurer has to authorize the expenditures, noting that one is identified as the sender of a mass mailing by paying for the mass mailing.

In response to a question, Mr. Russo stated that the violation involved a non-monetary contribution by CIBPAC when they paid for the mailers in coordination with the Prenter campaign. Enforcement staff believed that there was liability by virtue of being the treasurer of a committee that sends the mass mailing. In the alternative, Enforcement staff believed that there was liability under the aiding and abetting provisions of the PRA.

Commissioner Karlan questioned whether there was a separate scienter requirement for the treasurer, such as whether the treasurer has to know that the check he signed is going for a particular purpose in order to establish liability.

Mr. Russo stated that there was no scienter requirement because the treasurer has the responsibility to know what the committee is doing. He explained that the treasurer would be breaching his duty as treasurer if he did not know what he was paying for when he signed the checks. The treasurer is liable as the responsible party in control of the committee.

Commissioner Downey asked if there were situations where the treasurer of a committee that violates the PRA would not be liable with the committee for the violation.

Mr. Russo responded that the treasurer would be liable when the committee was liable. He noted that there have been instances when candidates have committed a fraud against the committee and against the treasurer, and the candidate has been held liable in those instances. Enforcement staff believed that the committee and the treasurer were one and the same. He noted that the committee can only act through human agency, and that the specified human agent for all actions of a non-candidate-controlled committee was the treasurer.

Commissioner Knox questioned whether the statute provided strict liability for the treasurer.

Mr. Russo responded that the statute should be considered in the context of the way that the PRA is set up. He explained that the PRA sets forth the treasurer's duties, including approving all expenditures and keeping the records necessary for compliance with the

law. He believed that those laws establish the treasurer as the person controlling activities of the committee. He conceded that there was not express language establishing strict liability for the treasurer, but noted that the construction of the statute and the regulations provide that operating interpretation.

Chairman Randolph noted that the "treasurer" regulation 18427 uses language such as, "to the best of the treasurer's knowledge," and, "must use reasonable diligence," which seemed to contemplate other than a strict liability standard.

Mr. Russo disagreed, noting that it would be helpful if there was greater clarity about the treasurer's responsibility. He explained that, as a practical matter, if the treasurer is not to be held liable for the actions of a non-candidate committee, then there is no enforcement mechanism because there would be no one to hold liable. He noted that, in most instances, the committees come into existence before an election and dissolve afterward. That practical consideration has long driven the Enforcement Division and advice to treat the treasurer as the responsible party for the committee's actions.

Chairman Randolph stated that there seemed to be an unspoken assumption in this case that the treasurer was doing more than just administrative treasurer duties. She questioned whether staff would have analyzed the case in the same manner if the treasurer was simply someone's next-door-neighbor.

Mr. Russo responded that he would have analyzed it the same way, noting that in this specific case, Mr. Bell was not just a treasurer, but was also a member of CIBPAC and there was evidence that could be used to show liability on an aiding and abetting theory above and beyond the mere fact that he was the treasurer. He stated that, on a broader level, a treasurer is responsible for the actions of a committee even if the treasurer is only a figurehead treasurer. He noted that otherwise, no one would be liable for the violations.

In response to a question, Mr. Russo explained that Enforcement's position from the beginning was that the treasurer was liable by virtue of being the treasurer of the committee. They alleged, at the probable cause level, that there was also aiding and abetting liability, but the probable cause finding did not comment on that issue. Staff continued to allege it in subsequent pleadings as an alternative theory for liability. However, the crux of the enforcement argument was that there was liability by virtue of being a treasurer, and that the aiding and abetting issue is reached only if it is found that the treasurer is not liable by virtue of being the treasurer.

Commissioner Downey asked whether staff was precluded in the ALJ hearing from presenting evidence and seeking an order on the aiding and abetting issue, since the issue was not referenced in the probable cause finding.

Mr. Russo responded that they were not precluded, and noted that the Executive Director was charged with finding probable cause that there was or was not a violation. The finding of probable cause does not have to address each and every theory that could be advanced or every argument that could be made to support liability. Mr. Russo stated

that aiding and abetting liability was not a separate violation, but is a theory of liability as an alternative to directly being responsible for the violation.

Commissioner Karlan noted that there is a scienter requirement for aiding and abetting. She was puzzled by the decision's reliance on a stipulated set of facts that do not draw a link showing that the treasurer intended to cause a mailing that was not properly identified.

Mr. Russo responded that staff believed that there were sufficient facts in the stipulation to establish the violation under either theory. He noted the fact that Mr. Bell was the treasurer of the committee and that, by virtue of being the treasurer there was liability. Alternatively, he explained that respondents stipulated that Mr. Bell approved the expenditures.

In response to a question, Mr. Russo stated that stipulated fact #23 in the proposed decision supported the position that there were sufficient facts to support the aiding and abetting charge. He noted that the ALJ found that there were sufficient facts to make that finding, and that he also found that there was an intent to violate the law.

Commissioner Karlan asked whether there was anything else in the record that would support stipulated fact #23.

Commissioner Knox observed that the ALJ's theory seemed to be that, if the treasurer intended to write the check, that would be sufficient intent, and all consequences flowing from that would legally be the responsibility of the treasurer.

Mr. Russo agreed, noting that the ALJ put a great deal of weight on the expertise of the treasurer and the way that the mailing was crafted, concluding that the treasurer knew what he was doing since the mailer was professionally prepared, thereby showing intent.

Commissioner Knox expressed reservations that the experience of the treasurer should be part of the analysis regarding whether the treasurer knew that the proper identifier was on the brochures. He was puzzled by the ALJ's language, "Impugning his law firm by the utilization of his law office address, it becomes apparent that respondent's status as an attorney begged deference from other committee members as one possessed of particular knowledge, experience and training in the exercise of his responsibilities to CIBPAC."

Mr. Russo stated that he could only speculate as to what the ALJ was trying to say.

Commissioner Knox shared staff's concern about who would be held liable if the treasurer is not. However, he did not know if that concern was sufficient enough to overcome the concern addressing whether or not it is fair to hold the treasurer liable in the first place, noting that there are some tasks that are so removed from the direct responsibilities of the treasurer that it may not be fair to hold him or her responsible. He noted that holding the treasurer liable may not be supported by statute.

Mr. Russo observed that there are campaigns that have a treasurer and hire outside law firms to file the campaign statements. The same question could arise there, asking whether it is fair to hold the treasurer responsible when the treasurer may not have seen all the records. He explained, however, that the staff response has always been that it is ultimately the treasurer's responsibility. If the treasurer delegates that responsibility to someone else, the treasurer is taking the risk that the other person may not act in accordance with the law. He believed the same argument could be made with the mailings, which is one of the most critical things a committee could do. Mr. Russo stated that the ALJ found the mailings to be such a significant action in the campaign that it would be unjust to find no one responsible.

Commissioner Karlan stated that the statute creates duties that cannot be delegated. However, she found nothing in the statute that requires the treasurer to look at every mailer that goes out, and asked if it was Enforcement's position that the treasurer should look at every piece of mail before it is sent out.

Mr. Russo responded that yes, the treasurer would be liable. He explained that the treasurer is required to maintain records of the committee, including copies of the mailers that are sent. The treasurer's implicit duties make the treasurer responsible for all of the activities and the treasurer should know what is being sent out as mailings by that committee. He believed that allowing the treasurer to look at the mailers after the fact instead of before the fact would be too strict of a construction of the regulation and would defy the purpose of the regulation which is to assign responsibility for the activities of the committee to the treasurer.

Commissioner Downey observed that Citizens of the Valley was a nonexistent organization, and that Prenter's committee made the initial deposit for the bulk sale permit under that name. Subsequently, eight mailings went out with that nonexistent organization being shown on the mailer as the organization that funded the mailing. He asked whether the stipulated facts provided the ALJ with sufficient evidence to conclude that Mr. Bell knew that Citizens of the Valley was indicated as the payor of the mailing.

Mr. Russo responded that this was the ALJ's conclusion, and that Mr. Russo believed that there was sufficient evidence to reach that conclusion based on Mr. Bell's role as the treasurer of both CIBPAC and Prenter committees.

Commissioner Knox observed that the ALJ decision did not specifically address what the treasurer knew. He expressed concern that assigning greater liability to the treasurer would result in driving the business of campaigns to professionals, making it less likely that neighbors or friends would agree to help with a campaign. He conceded that the law may require it, but found it problematic that the PRA, which was designed to open up the political process, ends up concentrating it into the hands of the professionals.

Charles Bell, speaking on behalf of himself and CIBPAC, stated that Enforcement's premise of treasurer liability seems to stem from the fact that it has been done in the past and from a concern that committees would not be available or responsible to pay for any

violation so the treasurer has been identified as an alternate source. He explained that the regulations and the statute do not support staff's theory of treasurer liability, noting that the committee or candidate is required to put the identification on mailing, not the treasurer. He conceded that treasurer liability could be found under a theory of aiding and abetting, however that should be a separate violation which was not brought in this case.

Mr. Bell explained that past cases reaching stipulated settlements with committees and treasurers was not precedential, as staff has consistently argued before the Commission and ALJs. He believed that finding the treasurer liable in this case would enormously expand the potential liability for treasurers. He added that this should be done in a regulatory venue and not through an enforcement venue. In response to a question, he stated that it would be even clearer to do it by statute because there was not currently statutory authority for the proposed action.

Mr. Bell stated that the aiding and abetting issue was raised at the probable cause conference level. He explained that the probable cause hearing was designed not to bar meritorious allegations from going forward to a formal administrative hearing process. He pointed out that the aiding and abetting was raised as a theory of liability at the probable cause hearing, but only incidentally, noting that the probable cause report referred only to violations of § 84305. He did not believe it was permitted under administrative law to add a separate theory of liability, since no finding was made on that issue at the probable cause hearing. He noted that the respondents filed a demurrer with the ALJ based on that jurisdictional argument, and that the ALJ denied it without prejudice.

Commissioner Karlan observed that Mr. Bell acknowledged that an aiding and abetting charge can be brought against the treasurer for violations committed by a committee, that the treasurer would have to understand that there was a violation and that the treasurer would have to intend to assist in the commission of the violation. However, she noted that Mr. Bell believed that argument to be barred because of the failure at the probable cause stage to make the findings that would have taken that issue to the ALJ.

Mr. Bell agreed.

Commissioner Karlan restated Mr. Bell's position that the statute does not permit strict liability for the treasurer.

Mr. Bell agreed, noting that § 91000 does have a provision for joint and several liability, but it normally would apply to each violation on its own, not different violations that are grouped as part of one set of allegations against a respondent.

Chairman Randolph noted that the mass mailing statute does provide for treasurer liability because the treasurer essentially acts on behalf of the committee.

Mr. Bell responded that he was a treasurer of the committee but was not a member of the committee. He argued that the treasurer is an officer of the committee, and he supposed that it could be inferred that he was a member of the committee if the stipulation stated that he contributed to the committee and participated in its decision making.

Commissioner Karlan noted that stipulated fact #3 stated, "…and as such was one of the persons who comprised CIBPAC."

Mr. Bell responded that, when they stipulated to that fact, it was his understanding that the treasurer was an officer of the committee in the sense that the treasurer is the one position that the committee is required to have under the PRA. He agreed to that language because it was not specific about being a member of the committee.

Commissioner Knox asked what the Commission would do if the treasurer was not held strictly liable, noting Mr. Russo's concern that committees would go in and out of business flouting the law.

Mr. Bell responded that there was no real evidence of that being a serious concern, but that, if it was, the FPPC should seek a legislative change that would bind committees and officers more completely. He noted that he was not aware of any committees going to civil court to hold committee members responsible for an FPPC enforcement penalty. He explained that many committees are not incorporated and that it would be possible to do in theory.

Commissioner Karlan stated that an aiding and abetting theory would respond to the risk that there is no one to go after when there is a violation, noting that the only case in which there was no ability to enforce because the committees go in and out of existence would be in the case where there was no scienter on the part of the treasurer.

Mr. Bell agreed.

In response to a question, Mr. Bell stated that he was paid to be the treasurer.

Mr. Bell stated that it has been eight years since the date of the election, noting that it appears that the case was not opened until 1999, three years after the election. He explained that the *Griset* case was pursued not long after that on an additional theory in the lower courts, then to the Supreme Court, and was decided on procedural grounds. At that point, the District Court of Appeal held that the statute was unconstitutional. Prior to the first decision, the Court of appeal construed the statute to be constitutional as it applied only to candidates and their controlled committees. He noted that committees such as CIBPAC, at that time, would not have been subject to it had the Supreme Court adopted the same approach of constitutional interpretation as the district court. Mr. Bell explained that the case was delayed somewhat while it waited for the outcome of *Griset,* since the issue was whether the statute was unconstitutional on its face.

In response to a question, Mr. Bell stated that he became aware that the case was underway sometime in 2000, to the best of his recollection. He noted that there was an agreement at that point to wait until *Griset* was resolved.

Commissioner Karlan asked if Mr. Bell's laches argument revolved around the 4 years between the time of the election and when Mr. Bell became aware of the case, believing that to be an inexcusable delay.

Mr. Bell responded that they made that argument but did not pursue it before the ALJ.

Mr. Bell stated that the sender identification issue was one of the most hotly litigated single statutes of the PRA. He explained that the issue of nonmonetary or third party contributor sender has been the subject of controversy. Mr. Bell did not agree with the ALJ conclusion in the proposed decision that the issue was clear after 1991, noting that *Griset* and *McIntyre* were still being litigated at that time. He pointed out that courts around the country have construed it narrowly to apply to candidates and their controlled committees, noting that there is presently a case before the 7th Circuit Court of Appeal dealing with this issue.

Mr. Bell concluded by saying that this case involved a contentious issue that has been inconclusively litigated and that the Commission and staff have disagreed on the subject as well. He believed that the Commission should consider that with respect to the finding of intentional violation.

Commissioner Downey pointed out that Mr. Bell seemed to be suggesting that it would have been difficult and controversial to determine what address to use on the mass mailings in 1996.

Mr. Bell responded that the candidate committee's name was on the mass mailing. He noted that there has never been any contention that the committee failed to disclose the nonmonetary contributions. He pointed out that the campaign committee also made timely disclosures.

Commissioner Downey observed that both parties seemed to be in agreement that the treasurer was strictly liable for meeting filing deadlines and filing accurate reports. He assumed they would agree that there was strict liability for the treasurer's obligation to maintain records so that an appropriate audit can take place.

Mr. Bell responded that they have always had some problems with strict liability in terms of whether they are weighed as intentional or serious.

In response to a question, Mr. Bell did not believe that the statute required that mass mailing records be kept. He agreed that committees did keep those records, but stated that there was no evidence in this case, and he did not believe, that he had actually seen the mailing when it went out. In response to a question, Mr. Bell stated that he did not review or see any of the eight mailers when they went out.

In response to a question, Mr. Russo stated that the statute would only allow liability to be assigned to the donors under an aiding and abetting theory. In that case, the donors would have to have a plan, from the beginning, to send the mailings out without proper sender identification, and the donors would have to have contributed money and advanced the purpose of evading sender identification.

In response to a question, Mr. Russo stated that committees are generally made up of donors and the treasurer, and the question of "members" depends on how the committee is structured. He noted that some committees have "members" who get together and make decisions. In response to a question, he stated that the status as a "member" had no relevance in the statute because the only position required in the PRA is that of treasurer.

Mr. Russo clarified that the regulations provide that the treasurer must maintain original source documentation including copies of mailers, as referenced in the ALJ decision, footnote 20.

Chairman Randolph stated that the issue would be considered during closed session.

Item #20. Discussion of Proposed Regulatory Action to Address General Plan Decisions: Amendment of Regulations 18704.2 and 18705.2, Adoption of Regulations 18706.1 and 18707.10 and Amendment of Regulation 18707.1.

Staff Counsel Natalie Bocanegra stated that this project was initiated in response to concerns raised by several jurisdictions regarding the "public generally" exception. She noted the County of San Diego's 2002 concern that public officials were being disqualified inappropriately with regard to general plan decisions, and the City of Yountville's concerns regarding the special "public generally" rule applicable to small jurisdictions. She explained issues concerning the difficulty of gathering information to apply the exception and the absence of a definition for "substantially the same manner."

Ms. Bocanegra pointed out that two criteria must be met in order to apply the "public generally" rule: (1) A "significant segment" of the public must be affected by the decision, and; (2) the "significant segment" must be affected in "substantially the same manner" as the official. She explained that the Commission has consistently rejected adoption of a "bright line rule" defining "substantially the same manner" because it was difficult to devise a rule that would apply to all situations. She cited its most recent consideration of the issue in 2000, when the Commission decided that a "substantially the same manner" determination must be done on a case-by-case basis. She explained that discussions of the issue revealed that some of the difficulty in determining whether "substantially similar" effects existed resulted from difficulties with prior steps of the eight-step analysis. She provided examples of situations where analyses erred in the prior steps, noting how it created difficulty in determining whether the "public generally" exception applied.

Ms. Bocanegra stated that, with the help of many other public entities and officials, staff found methods to address the issues at earlier steps of the analysis. She suggested that the Commission first address the threshold issue of whether special rules are needed for general plan decisions. She explained that general plan decisions often create a conflict of interest when the decision will significantly alter the characteristics of a neighborhood, allow increased development, or alter the permitted uses of specific lands. She suggested that there may be ways to make the public generally analysis less difficult, but noted that those types of decisions can affect an official's property in very significant ways that may not be felt by the public generally. She directed the Commission to §§ 81001 and 81002 for guidance in drawing the line for special rules, which provide that government serves the needs of all citizens equally, that enforcement mechanisms vigorously enforce the PRA, and that officials should be disqualified to avoid conflicts of interest in appropriate circumstances. She noted that the problem has been in determining when those appropriate circumstances exist.

Ms. Bocanegra explained that staff developed several regulatory approaches dealing with the issue, and that the Commission could adopt them individually or in combination with one another. She pointed out that the language being presented for all approaches applied to planning objectives or policies, in order to eliminate decisions that would enable developers, businesses or other interests to execute their economic agenda. She presented a chart to the Commissioners and made it available to the public, designed to help follow the decision points.

Ms. Bocanegra presented the "Involvement" approach in Step 4, which proposed to clarify involvement of real property, but would otherwise maintain the status quo by amending regulation 18704.2 to specify that the involvement of real property in broad policy making general plan decisions would be deemed indirectly involved in the decision. She pointed out that it would clarify involvement, which has been inconsistent in advice letters, and would conform to the current rules. However, this approach would not resolve new issues that may arise from the presumption analysis. She noted that some members of the regulated community believe that this approach does not go far enough.

Ms. Bocanegra explained that the "Materiality" approach in Step 5 would deal with the materiality standard, and would amend regulation 18705.2 to establish a stronger presumption that the effect on indirectly involved real property is not material. The proposal would provide a presumption that a decision affecting only the character of the neighborhood would not result in a material financial effect, and the presumption could not be rebutted by facts relating to the character of the neighborhood. She pointed out that this approach would work with the existing structure and allows for a rebuttable presumption, but would add complexity by adding an alternate standard to the analysis.

Commission Counsel Ken Glick presented the "Foreseeability" approach in Step 6, which would amend regulation 18706.1, and differs from the two previous proposals in that it (1) operates as a "safe harbor" allowing an official to participate without allowing a challenge through a rebuttable presumption, and (2) it would apply to all forms of

economic interest, not just real property. He explained that it established additional eligibility criteria dealing with decisions initiated by a public official, creating a stronger filter for the "safe harbor."

Mr. Glick explained that the decisions involved would be advisory and would be less likely to have a specific impact on the community. He pointed out that a public official who initiates a proposal is more inclined to be acting in his or her own self interest than if someone else initiated the proposal.

Ms. Bocanegra explained that the "public generally" approach in Step 7 proposed new regulation 18707.10, creating a special "public generally" exception applicable to the types of general plan decisions previously described. This approach would be appropriate if the general plan decision involved truly affects many people. It would clarify "substantially the same manner" and it could be tailored to general plan decisions. However, it would expand the "public generally" exception and, under the PRA, exceptions are to be construed narrowly. She noted that the factors must work for all jurisdictions in general plan decisions, and that created a challenge for staff. This approach would require data gathering.

Ms. Bocanegra summarized the different approaches proposed, noting that the "Involvement" approach would clarify that involvement of real property would be considered indirectly involved in a general plan decision and is the first choice of the Enforcement Division because it was consistent with current framework and analysis. She explained that staff did not recommend the "Materiality" approach because it would provide an alternate means of rebutting the presumption of non-materiality. She stated that the "Foreseeability" approach proposed that it is not reasonably foreseeable that any type of economic interest will be materially affected by a decision, thus providing a "safe harbor" for the public official. The "Foreseeability" approach was preferred by the Legal Division. Lastly, she explained that the "Step 7" approach would develop a special rule that would require more work for the public officials since the official would already have gone through the prior approaches. The "Step 7" approach was not recommended by staff.

Ms. Bocanegra stated that Mike Martello, City Attorney with the City of Mountain View and representing the League of California Cities, phoned in his recommendation that the Commissioners use the "Foreseeability" approach, but he pointed out that vertical consistency under the general plan law would require staff to ensure that the language is sufficiently narrow regarding the types of decisions that should be captured, including zoning decisions that need to be consistent with the broad general plan decisions. Ms. Bocanegra stated that Robert Kwong, with the County of Ventura, echoed Mr. Martello's preference and his concerns about the types of decisions that should be captured.

Chairman Randolph reported that the City of San Diego sent a comment letter to the Commission, but that it had arrived earlier in the day and that she had not had time to review it.

John Sansone, County Counsel for San Diego, explained that he was there to verbally share the information that was in their letter.

Commissioner Knox requested that the comments get to the Commission earlier, noting that the Commissioners wanted to get their input and that it was helpful to have the comments in writing well in advance of the meeting.

Mr. Sansone stated that Tom Harron, Chief Deputy County Counsel who oversees San Diego's land use issues was also present to answer any technical questions.

Mr. Sansone complimented Commission staff for their work on the project.

Mr. Sansone stated that the County of San Diego also supported the "Foreseeability" approach because it addresses their concerns. He explained that a general plan decision is very comprehensive and broad-based in nature, and addresses policy issues instead of issues that impact projects that could provide economic benefits to developers. They believed that the approach should focus on policy-based general plan comprehensive decisions. He pointed out that the general plan is a land use "constitution" for a public entity, and amendments to that plan are purely legislative in nature and are applicable to the entire jurisdiction.

Mr. Sansone believed that public officials involved in the general plan should be permitted to participate in a discussion about the general plan because some of those public officials represent unincorporated districts and the voters of those areas feel passionately about land use matters. He complimented staff's proposal that the governmental decision at issue be limited to a general plan decision that is policy driven, dealing with planning objectives, and will not have an impact on projects.

Mr. Sansone was very interested in a regulation that is easy to understand and apply, has objective standards and will increase certainty for a public official to know whether he or she can participate in a decision. He explained that it was important for public officials to know whether or not they should be disqualified, noting that some officials err on the side of caution and recuse themselves when they are not sure if they should be disqualified. He believed that the proposal would increase the participation of those officials who currently would not know whether they could participate.

Mr. Sansone explained that the "Foreseeability" approach met the requirements described on page 3 of their letter.

Chairman Randolph stated that the "Foreseeability" approach provided no disqualification options for instances where it is reasonably foreseeable. Her concern centered on a public official who makes a general plan decision knowing it will be consistent with the official's plans for future land use for the official's property.

Mr. Sansone commented that it was important for the proposed definition to state that future decisions will include permitting, licensing and rezoning, and variances. He

suggested that any actions such as those that follow from the general plan decision would subject the public official to the 8-step process in order to participate.

Mr. Harron agreed, noting that no permits or development rights come out of the general plan. He explained that, in a worst case scenario, a public official who serves a self-interest on the general plan, will be disqualified at a later stage where other issues will be considered before approval can be made.

Commissioner Knox stated that a city with a slum area might target that area in the general plan as a redevelopment area with shops and restaurants, and a council person who held property in that slum area could vote for the general plan, establishing the zoning changes needed to go forward with the redevelopment, thus putting the official's property in an advantageous economic position. Subsequent permit type approvals may not be an issue once the general plan is approved.

Mr. Harron stated that a redevelopment plan would not be included in the general plan, and that the general plan would designate the type of use for the property. In response to a question, Mr. Harron stated that the hypothetical situation Commissioner Knox presented would not occur.

Chairman Randolph suggested that a general plan could identify an area as one that could be designated for revitalization efforts. Those efforts could include rezoning, adoption of a redevelopment plan, or other incentives to develop in that area. She questioned whether Mr. Harron's position was that the official would not be allowed to participate in any of those decisions that would implement the broad policy goal of revitalizing the area.

Mr. Harron responded that it was, noting that revitalization efforts should not be included in the exception, and that the exception should only be allowed when designating the use of the land in the land use element of the general plan. He believed the same situation existed in the other elements of the general plan. As an example, the circulation element involved decisions not made in the general plan or imposed a development impact fee that would be uniform throughout the jurisdiction.

Commissioner Karlan asked whether there was a definition of "general plan" in the law.

Mr. Harron responded that there was a law that included seven different elements for the general plan.

Chairman Randolph stated that a general plan can have both broad and specific decisions, and that specific decisions would fall out of the exception under the proposed regulations.

Commissioner Karlan stated that the Yountville issue considered at the June 2003 Commission meeting revolved around two separate problems. The first involved people who were being disqualified based on their residence. Commissioner Karlan suggested developing a streamlined program to deal with actual residences, to make it very easy and clear that officials can participate in the general plan decisions when the official's

residence was affected. She was more concerned about the other more complex issue, wherein a public official owned land that was not for his residence, but was going to be used for redevelopment of a slum area, which she believed was a more serious concern because of the potential for impropriety on the part of the public official. She asked whether the cases that should be easy could be lifted out of the 8-step process. She did not believe that the "safe harbor" should be included in step 3, since step 3 involved a factual determination, and suggested that there be another step dealing with the general plan and residences and eliminating the need to go through the other steps.

Mr. Sansone agreed that a regulation outside the 8-step process could be a better option. He was concerned that there be a conflict of interest rule that takes into account the considerations he outlined, but did not believe that it had to be under the "Foreseeability" approach.

Chairman Randolph asked whether the Commission was interested in focusing their discussion on Decisions 1, 3 or any other alternative proposal.

Commissioner Knox stated that he was not satisfied with the language of the "public generally" approach in Decision 4, but that he was not prepared to rule out that option yet. He supported the notion that it should be simple, easy to apply, objective and allow a public official to make a decision as swiftly and easily as possible. He was not convinced that it needed to be in the "Foreseeability" approach because approval of a general plan probably has a foreseeable consequence for a public official's property that is affected. He believed that the Commission's goal should include a common sense approach and the "public generally" exception may be the appropriate place to deal with the issue.

Chairman Randolph suggested that the "public generally" exception could be revisited. She noted that Decision 4 takes the general plan context and fits it in the existing "public generally" rule, requiring the public official to identify a significant segment and show that the official's property will be affected in substantially the same manner as the significant segment that has been identified. However, she explained that trying to do that results in odd mechanisms trying to define what "substantially the same manner" is. She suggested that it could be taken out of the general rule for "public generally", because the general rule is regulatory, and the Commission could decide to define ""public generally"" in a way that is not exactly the way that the general rule in the regulation is defined. She noted that the Commission could do something similar to Commissioner Karlan's suggestion. In that case, she believed that it might be a good idea to keep the "Step 7" approach as an option.

Commissioner Knox agreed. He was concerned that the proposed language of the "Step 7" approach included very cumbersome tests.

Commissioner Karlan stated that there should be a "safe harbor" for a large category of cases where it is very clear to people when they should qualify for the "safe harbor." She believed that staff's repeated assertions in the proposed language indicating that it is meant to be really general was very helpful.

Mr. Harron stated that the proposed language in regulation 18706 was great, but that it should be under the "Step 7" approach instead of the "Foreseeable" approach.

Commissioner Karlan agreed, and suggested that the analysis start with a determination of whether the type of decision is a general plan decision. She questioned whether the following question should then identify the type of economic interest involved to determine whether the official can participate in the general plan decision. She asked whether there should be a simple rule that identifies whether the property is the official's principal place of residence and, if it is, the official would automatically be able to participate.

Mr. Harron responded that it would eliminate something that is not a problem. If the public official's only interest is a residence, the official would fit into the current "public generally" exception. If the official owns two or three lots, however, the "public generally" exception would probably not apply and the public official would not be allowed to participate in a decision that is so broadly based that the official should not be disqualified.

Chairman Randolph stated that she preferred the "Involvement" approach at Step 4, providing an indirect involvement standard for general plan decisions in the context of real property because it is consistent with existing framework, and it allows the public official to take advantage of the presumption that, if it is indirect, then the effect is not material. She conceded that the presumption issue would have to be analyzed, but did not believe it would be very burdensome. She presented a hypothetical, where a council member in Sonoma County had a 12-acre parcel on the edge of town, which was one of the areas that would be fundamentally modified by the land use designation. Since most other people in the town had small lots, the public official would fall out of the exception in Decision 1. She believed that scenario to be acceptable when the public official has a very different economic interest than the rest of the community.

Mr. Harron argued that the hypothetical addressed an extreme example, and that the rule would catch too many people in that net. He pointed out that the law interprets prohibitions broadly and exceptions narrowly. He stated that he would not advise any official who owns more than a house that they would be safe in participating.

Commissioner Knox agreed that using the "Involvement" approach would be problematic because the special circumstances in proposed regulation 18705.2(b)(1)(A) seem to "swallow up" the presumption of the indirect effect.

Chairman Randolph observed that the foreseeability step could work to allow the public official to participate, however, she agreed with Commissioner Knox's point. She believed that the Commission should use the "Involvement" approach even if they decide to do something broader, because existing advice letters have indicated an indirect effect when the general plan decision was very broad, and others that indicate that a general plan decision is direct. She believed that the Commission must, at a minimum, determine

that a broad based general plan decision that is one of policy should be considered indirect in the same way that a change in a zoning category is considered indirect.

Commissioner Knox pointed out that the language reads, "…unless it is rebutted" and describes circumstances under which it can be rebutted. He questioned whether the end result would effectively address the problem, since the basis for rebutting the presumption of an indirect involvement basically "swallow up" the presumption.

Chairman Randolph stated that it would at least help, and the Commission could consider additional changes to help even more. She believed clarification of existing advice regarding whether a general plan decision is direct or indirect was necessary to make advice consistent. She noted that it would help in those instances where proposed changes are made under the circumstances described in 18705.2(b)(1)(A), but she believed that the foreseeability step will end the analysis.

Commissioner Blair asked whether the proposal addressed circumstances dealing with whether a public official could participate in a decision to change the general plan when it would encourage the use of services the official may provide in the official's business, thereby benefiting the official economically.

Chairman Randolph stated that it would not be covered under regulation 18704.2, but could be under 18706.1.

Commissioner Blair thought the discussion should be broadened to address economic issues of the official, and not just real property.

Commissioner Karlan stated that she had sympathy for the idea that motivated the language included in the "Foreseeability" approach, but believed the language to be in the wrong place because it would create a legal fiction that something was not foreseeable when it may have been foreseeable. She agreed that there should be a clear and easy "safe harbor," for those people who qualify for it, but suggested that it be placed in a more sensible place. She noted that the analysis could be started at any of the steps, but that people go through them one by one. Therefore, she believed that the "safe harbor" should be at the beginning of the 8-step analysis.

Mr. Glick responded that Step 6 of the analysis was a streamlined process. Even though six steps are involved, he believed it required only ½ hour of analysis time. He noted that determining whether the materiality standard was met can be problematic for officials, but it would not be necessary with the categorical exclusion.

Commissioner Karlan asked why the categorical exclusion was in Step 6.

Ms. Bocanegra responded that, in order for any material financial effect to occur, there would have to be subsequent permit or zoning decisions, and it was believed that, at the beginning of the general plan discussions, contingencies must occur in order for the benefit to manifest.

Commissioner Karlan observed that, if a general plan proposed that no more building could occur, everyone would know that the city was now no-growth and everyone would know that the value of their house would go up. The public official could participate under the "public generally" exception even though the decision absolutely had an effect on the individual's property.

Chairman Randolph asked staff to respond to the idea of having a "public generally" rule that would be outside of the current structure.

Ms. Bocanegra responded that an assessment would be made to determine that it is reasonably foreseeable that a decision will involve a material financial effect for the official, then, under the "public generally" exception of Step 7, the determination is made addressing whether the general public is affected in the same manner. She explained that Step 7 requires comparisons with other people, and noted that if that comparison is eliminated it would drastically alter what the "public generally" exception means and how it is applied.

Ms. Menchaca agreed with the concepts outlined by Commissioner Karlan. She explained that the types of decisions that were included in the language were there because the formulation of specific ideas had not yet been dealt with in the analysis. She stated that Step 6 involved such early stages of the analysis that the material financial effect could not be assessed. She explained that the argument against the "Foreseeability" approach was that it would not be practical to say that a large business or someone with a residence would not be affected by a general plan decision. She agreed that the approach could be included in the "Step 7" approach, noting that they were aiming at the type of decisions that impact the jurisdiction. She noted that the "public generally" exception dealt with a large, heterogeneous segment of the population, and that the language describing the types of decisions at issue currently in Step 6 could translate to the "public generally" exception with respect to identification of a significant segment. She reiterated that they were aiming at jurisdiction-wide decisions.

Ms. Menchaca explained that the second prong requirement of the statute, determining whether there were indistinguishable effects on the public official, was problematic. She did not know whether a regulation could be drafted with appropriate language addressing the second prong, but noted that it did not matter if the official is not affected in a similar manner as the public. She explained that carving out a regulation dealing with personal residences could probably be done because everyone has a residence in the jurisdiction. However, she pointed out that it would be difficult to include officials who have multiple properties, business incomes, or sources of income or gifts that are affected in that regulation, explaining that it would be contrary to the statute to not include a test for those scenarios in the regulation. Staff addressed that issue in the proposed regulation 18707.10, utilizing a theory of proportional effects (one-size-fits-all), and applying particular factors that attempt to reach a general test comparing the public official with a significant segment of the jurisdiction.

In response to a question, Ms. Bocanegra stated that the "substantially the same manner" language is not in the statute, but is included in the "public generally" general rule.

Ms. Menchaca pointed out that the applicable term is "indistinguishable."

Chairman Randolph observed that the "public generally" exception appears in § 87103.

Ms. Bocanegra clarified that staff developed a two prong approach to deal with the language of § 87103. She explained that the comparison is made when distinguishing the effect from the effect on the public generally.

Commissioner Blair observed that carving a residence out would not be necessary.

Ms. Menchaca agreed.

Commissioner Blair questioned whether the regulation could provide that a person could participate in a decision as long as it did not affect a person's net worth over 5%.

Chairman Randolph responded that it is often difficult to determine what the financial effect of that decision would be, let alone how it will affect the official's economic interest.

Ms. Bocanegra stated that the indirect test assesses materiality for business entities, determining dollar amounts.

Commissioner Karlan questioned how one would know the percentage of increase that might occur following a decision which would result in an increased demand for the services provided by the public official's business. She suggested that the business owner would be very worried about guessing wrong.

Commissioner Blair suggested that minimal research could discern the economic growth of the area historically, and noted that the public needed some sort of measurable steps.

Assistant General Counsel John Wallace explained that prior versions of the property regulations used dollar thresholds, but that the regulated community stated that it was too difficult. During Phase 2, the Commission eliminated the dollar threshold after hearing concerns that appraisals had to be done to assess the value of the property. He understood that the regulated community was reluctant to go back to percentage or dollar thresholds. He speculated that it may be why the regulated community does not favor the proposed "public generally" language.

Commissioner Blair pointed out that public officials may always question whether they can vote, and suggested that the language should be less confusing.

Mr. Sansone observed that the Commission had latitude in how to address the issues. He agreed that the "Foreseeability" approach would create a legal fiction in some ways, and

commented that he would have a difficult time explaining the reasons for the rules to public officials. However, including it in its own "public generally" exception under Step 7 would work. He clarified that he originally supported the "Foreseeability" approach, but that, after listening to the Commission discussion, he believed that a new "public generally" exception could be drafted following the proposed language in the "Foreseeability" approach, but should be cast as a "public generally" exception for general plan decisions.

Chairman Randolph observed that they would then start from the premise that they create a legal fiction and then decide where to put the language.

Commissioner Knox and Downey disagreed.

Mr. Sansone did not think it would be a legal fiction, and suggested that the nature of the government decision under discussion could be considered by the Commission to be an action applying to the public generally because it is a high level policy decision. He thought it would be more honest to take that approach than to say that it is not reasonably foreseeable that a decision will have a financial effect when, in fact, the decision will have a financial effect.

Chairman Randolph stated that if the exception was in Step 7, county supervisors who are large landowners of an unincorporated area would be affected somewhat differently than the average resident who lives in a subdivision.

Mr. Sansone pointed out that the official would probably have to disqualify themselves at the next level of action, when the decision to permit or rezone is before the agency. He believed that they should participate when the general plan is being developed, noting that the voters needed to have their interests represented. He conceded that they should not be involved in the decision at the second level of action.

Chairman Randolph commented that the same issue would arise as when a council member wonders why it would be foreseeable at one level but not another.

Commissioner Knox stated that it was not a question of forseeability.

Mr. Harron stated that a lot of things happen in between the two decisions. He explained that sometimes the general plan land use designation means nothing at the second level because the property in question may not have water, or does not perk, or has some other limitation that will not allow the official to take advantage of the land use designation change that might have otherwise financially benefited the official.

Commissioner Downey stated that the Commission ought to avoid the most obvious legal fictions, and believed that the best option for that was the "Step 7" approach. He supported moving the language of the "Foreseeability" approach into the "public generally" exception.

Chairman Randolph suggested that the "Materiality" approach be eliminated from the discussion. She believed that the "Involvement" approach should be kept to clarify existing advice, and that staff should look at the "Public generally" approach option using the concepts of the "Foreseeability" approach, as described by Commissioner Downey.

In response to a question, Commissioner Knox clarified that the "Foreseeability" approach would be transplanted into Step 7, and that the "Foreseeability" approach at step 6 would not be pursued.

Chairman Randolph agreed.

Commissioner Knox questioned whether the language of 18706.1(b)(4)(i)and (ii) could be made more clear by distinguishing "private" and "official" capacities.

Mr. Glick explained that, in addition to an official's responsibilities to his or her constituents, the official has his or her own personal financial agenda and has the legal ability address the agency the official represents to voice his or her personal concerns. Staff was trying to embody the concept of the official representing his or her own personal interests instead of the interests of constituents. Additionally, staff was trying to address instances where a public official might ask someone else to represent the official's private agenda before the agency. He noted that staff was also trying to capture instances where an official, acting in his or her official capacity, might introduce a resolution that was clearly in the personal interest of the official.

Commissioner Knox stated that the language was ambiguous, and asked whether an official would be initiating something in a private capacity in the general plan. If so, he asked whether it would require inquiry as to motives, possibly defeating the purpose of providing a tool that would help the official know whether he or she can participate in a decision.

Mr. Glick stated that he would be happy to research the issue.

Mr. Sansone stated that a supervisor who makes a proposal as outlined above would not fall within the exception because it would not, and should not, be considered a broad based policy decision.

Commissioner Knox asked how one would know whether the public official was initiating something in his or her private or official capacity.

Mr. Sansone stated that the official could file an application calling for a general plan amendment when initiating an action in his or her private capacity.

Commissioner Karlan noted that it was easy to deal with the language when the official formally files a request in his or her private capacity. However, determining that an official makes a request in his or her official capacity for a personal interest would

require looking into the mind of the official. She noted that the decision would not be a general plan decision if it involved an identifiable parcel.

Chairman Randolph stated that the language was useful to clarify that the official was the applicant, and the official would be the applicant if the official's name was on the form regardless of whether the official was acting in his or her private or official capacity. She explained that there could be a situation where a city manager was, in an official capacity, dealing with construction of a building on a piece of property for the agency, but the piece of property could be next door to the official's property. She suggested that the language, "for the purpose of affecting an economic interest" could be refined. She believed that the language should be kept in the regulation to make it explicit that those decisions are not included.

Mr. Glick noted that "official capacity" could include acting on behalf of the jurisdiction, or acting as an elected representative of the citizens. He asked for clarification.

Chairman Randolph responded that she wanted to reach the official who was acting on behalf of the official's own economic interest. She explained that the official would be acting in a private capacity when the official represented the official's own economic interests.

Commissioner Knox noted that the issue would focus on whether the proposal included an identifiable parcel. He questioned whether the official's capacity test would be easily administered since it would involve looking into the public official's mind. He believed that the Commission should explore the nexus connecting the official's economic interest and the decision.

Chairman Randolph stated that it was also important to include, even for broader based decisions, the proposed language of 18706.1(b)(4)(iii)and (iv), so that an applicant is not an economic interest of the public official.

Ms. Menchaca stated that it was possible to have an applicant participating in a decision, and that the applicant and a significant segment of the public are affected the same way. She believed that the language might not translate easily into a "public generally" exception, but suggested that it could be utilized to help clarify when a decision is direct or indirect.

In response to a question, Chairman Randolph stated that a second pre-notice discussion was necessary.

Chairman Randolph stated that she supported the clarifying changes proposed for regulation 18707.1, and could be brought back for adoption instead of pre-notice discussion unless the changes to the language of proposed regulation 18707.10 make further changes to the "public generally" exception necessary.

Ms. Menchaca pointed out that one of the versions offered leasehold language while the other did not, and asked if the Commission had a preference.

Commissioner Knox stated that the "public generally" version would be substantially altered, and suggested that both versions be brought back.

Ms. Bocanegra responded that staff would substantially alter the regulation with version 2 of the proposal, and not with version 1.

Chairman Randolph directed staff to bring back whatever version(s) seemed appropriate.

The Commission adjourned to closed session at 12:22 p.m.

The Commission reconvened at 2:04 p.m.

Item #19 (Continued). ***In the Matter of California Independent Business Political Action Committee and Charles H. Bell, Jr.*****, FPPC No. 99/195.**

Chairman Randolph announced that the Commission decided to select the option under Government Code section 11517(c)(2)(E), rejecting the proposed decision and deciding the case upon the record. The Commission is going to make the opportunity available for parties to submit briefings and will hold a hearing on both factual and legal issues involving treasurer liability under 84305 and 83116.5. The Commission will obtain a transcript of the ALJ hearing, and, as soon as they know how long it will take to get that transcript, both parties will receive a briefing schedule and hearing date from the ED. Both parties will be entitled to present additional evidence.

Item # 21. March 2004 Work Plan Revisions.

Mr. Wallace presented a few minor changes to the quarterly revision of the regulation calendar, including the addition of a few Interested Persons meetings and movement of some items to link them to other items.

Chairman Randolph noted that she questioned whether regulations addressing § 85307, the extension of credit, should be considered early, but ultimately decided that there were issues in addition to the $100,000 limit applying to commercial loans to a candidate. She asked the Commissioners whether they were comfortable with that.

There was no objection from the Commission.

In response to a question, Mr. Wallace stated that the amount of public interest in a regulation depends on the topic.

Ms. Menchaca stated that there has been a lot of input from people affected by the regulations. She pointed out that, if people are aware of the process, staff sees more participation.

Item #22. Legislative Report.

Executive Fellow Stephanie Dougherty explained that the purpose of AB 1784 and 1785 was to limit lobbyist contact with elected state officers under certain circumstances. She noted that the bills would prohibit lobbyists from contacting an elected state officer when a contractual relationship exists with the controlled campaign committee of that elected stated officer or when a lobbyist has a business relationship with that elected state officer.

Ms. Dougherty stated that AB 1784 would impose those prohibitions on lobbyist contact to statewide officers and AB 1785 imposes the prohibitions on lobbyist contact with members of the Legislature. She noted that the bills also require that a lobbyist notify the Secretary of State of a contractual or business relationship within 14 days.

Ms. Dougherty explained that AB 1784 has an additional requirement that a candidate report as an accrued expense any payments, contracts, or agreements that are contingent upon election to office.

Ms. Dougherty stated that staff recommended that the Commission request some amendments to the bills but take no position on them. She suggested amendments that would include language requesting reimbursement for litigation costs the FPPC might incur defending legal challenges to the bills, and addressing the $50,000 costs to the FPPC for implementation of the bills.

In response to a question, Mr. Krausse stated that there could be constitutional issues with the bills because the bills regulate lobbyists and tell them when they can contact Legislators. He noted that he raised the constitutionality issue with legislative staffers who contacted him to see what could be done in this area, advising them that it would be more appropriate to deal with the issue in the house rules. He explained that the constitutionality issue was why staff was concerned about possible litigation costs.

Commissioner Knox observed that the AB 1784 was aimed at lobbyists who also served as campaign consultants.

Mr. Krausse responded that the bill originated from that concern, but that the concept had been expanded to include business relationships between the lobbyist and state officials, including statewide officials.

In response to a question, Mr. Krausse stated that the statewide officers included the constitutional officers and the Insurance Commissioner. He stated that these officials and members of the PERS Board and the State Board of Equalization would be addressed under AB 1784. Mr. Krausse explained that the bills originally applied only to Legislators, and that, with the election of the new governor, a concern arose regarding a relationship between someone who was involved in the campaign who also had a public affairs and/or lobbying firm. He noted that the governor supported having the bill apply to constitutional officers.

Commissioner Knox stated that it seemed somewhat draconian to tell lobbyists that they cannot talk to public officials.

Commissioner Blair stated that the prohibition was applied when the communication was for the purpose of influencing legislative or administrative action.

Commissioner Knox agreed, but noted that the right to petition government is not limited by the fact that a business relationship exists between the petitioner and the government official being petitioned.

Mr. Krausse pointed out that the controversy that gave rise to the bills occurred in the Assembly, and noted that it would be interesting to see if the Senate shared the Assembly's concern.

There was no objection from the Commission to taking no position on either bill at the current time.

Mr. Krausse reported that staff will be presenting analyses on several bills at the next two Commission meetings, and gave the following synopsis of those bills:

AB 1980 – Staff has met with the author's office on this bill, dealing with the issues of § 85310 and whether a candidate is subject to some limit when controlling a ballot measure committee. The proposal would subject the candidate to the governor's contribution limit in accepting contributions into a candidate-controlled ballot measure committee. It would then subject that candidate to the contribution limit for the office the candidate is seeking with regard to expenditures made featuring the candidate. Mr. Krausse noted that the author's office may be simplifying the language, eliminating the need to determine whether the candidate is featured in the advertisements. He suggested that this bill may offer a good place to deal with some of those issues that the Commission may not feel it can reach by regulation.

AB 2818 – Proposed amendment to a section of the Government Code that applies largely to Planning Commissioners or other public officials who grant licenses, permits or entitlements for use, and involves conflict-of-interest disqualification for those public officials who have accepted campaign contributions. Mr. Krausse noted that the bill will need to be opposed because it creates a big loophole. He anticipated that staff would present the analysis for this bill at the April 2004 Commission meeting.

AB 2842 – This bill involves a fairly substantial departure from the current Proposition 34 contribution limits as they would apply to candidates who face a self-funded opponent. Mr. Krausse noted that it is one of two bills that seek to fix the candidate loan exception, as litigated in *Camp v. Schwarzenegger*.

AB 2949 – A proposal for public funding of campaigns. He suggested that it may not make it through the Legislature this year, but that it may be reintroduced later or be brought before the voters.

AB 3006 – Represents the Governor's ethics proposal, creating a blackout period for fundraising during the budget period.

SB 1351 – A significant bill that would apply revolving door provisions to local public officials. This bill would create a fairly substantial workload for the FPPC.

SB 1449 – Attempts to correct the candidate loan limit under Proposition 34.

Item #23. Executive Director's Report.

The Executive Director's report was accepted as submitted.

Item #24. Litigation Report.

The Litigation Report was accepted as submitted. Chairman Randolph commended staff for prevailing in the *Agua* case.

Chairman Randolph adjourned the meeting at 2:29 p.m.

Dated: April 8, 2004.

Respectfully submitted,

_____
Sandra A. Johnson
Commission Assistant

Approved by:

_____
Chairman Randolph